

“compacting broach” for “forming a cavity in the intramedullary canal of a bone to receive a prosthetic component.” The Examiner does not explain how the “compacting broach” as claimed could be used to cut other areas in the body. What other areas of the body is the Examiner referring to? If the Examiner is referring to areas of the body other than intramedullary canals, then the Examiner is disregarding the invention as claimed. If the Examiner is referring to using the claimed compacting broach to cut intramedullary canals in other areas of the body, how is such a use a materially different process from the invention as claimed?

Based on the information known to applicant, applicant respectfully submits that the Commissioner has not established that the inventions of claims 1-10 and 11-12 have acquired a separate classification or status in the art. In particular, applicant does not understand the conclusion that Claims 11-12, drawn to a method of forming an elongate cavity in an intramedullary canal, should be classified in class 606, subclass 62. Class 606, subclass 062 is for “internal fixation means – intramedullary fixators.” Why would claims drawn to “a method of forming an elongate cavity in the intramedullary canal of a bone to receive a prosthetic component” fall into the subclass for “intramedullary fixators”? It seems more reasonable to conclude that method claims 11-12 should be classified in class 606, subclass 80 for “orthopedic cutting instrument; reamer or drill,” which is the same class and subclass that claims 1-10 fall under. Accordingly, it is respectfully suggested that the Patent Office has not met its burden of establishing a *prima facie* basis as to why Invention I and Invention II are independent and distinct.

#### **Election Requirement**

The Examiner further requires election to the following species: Species A (Fig. 1-3; Species B (Fig. 6-7); Subspecies I (Figure 4); Subspecies II (Fig. 5). The Examiner takes the position that claims 1-2 are currently generic.

Applicant traverses the election requirements. Applicant provisionally elects Species A (Figs. 1-3) and Subspecies I (Fig. 4). Currently, claims 1-4 and 6-10 are believed to read on Species A. Claims 107 and 9-10 are believed to read on Subspecies I.

Applicant traverses the election requirement on grounds that no reasons have been provided as to why the species are independent or distinct. MPEP 809.02(a), entitled “Election of Species,” states, in pertinent part: “Provide reasons why the species are independent or distinct.”  
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In this case, the required reasons have not been provided. Without reasons as to why the species are independent and distinct, applicant has no basis for considering or responding to the election requirement. Accordingly, it is respectfully submitted that the Patent Office has not met its burden of establishing a *prima facie* basis for election between Species A and B or between Subspecies I and II.

It is believed that this response has been filed within the applicable time period for responding and that no extension of time is therefore required, but if an extension is required, applicant hereby requests an appropriate extension of time. It is further believed that no fees are due, but if any fees or credits are due, the Commissioner is authorized to charge or deposit them to Deposit Account No. 502795.

Respectfully submitted,



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Shawn D. Sentilles, Reg. No. 38,299  
WRIGHT MEDICAL TECHNOLOGY, INC.  
(USPTO Customer No. 37902)  
5677 Airline Road  
Arlington, TN 38002  
Telephone: 901-867-4314

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